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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. [redacted]146

ILLINOIS CENTRAL RAILROAD COMPANY,

Petitioner,

versus

LARRY J. ANDRE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Franklin Press, Inc. Baton Rouge, La.

INDEX

SUBJECT MATTER

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	14
Appendix A Opinion of Court of Appeals	15
Appendix B Judgment of Court of Appeals	20
Appendix C Motion for Stay of Mandate	21
Appendix D Order Staying Mandate	24

CITATIONS

Dorland's Medical Dictionary	7
Lowenberg's Medical Diagnosis	7

Page

Encyclopaedia Brittanica 8
1957 Edition, Page 853

New Century Dictionary 8
Vol. 2, Page 1753

Webster's New Dictionary 8
Concise Ed. 1956, Page 703

38 American Jurisprudence 9, 10
Page 649 and Page 686

Corpus Juris Secundum 10
Vol. 65, Page 408 et seq.

Snodgrass v. Centannie 10
87 Southern 2nd 127 (March 26, 1956)

Chapman, et ux v. United States 11
194 Fed. Rep. 2nd 974

Moore v. Capital Transit Company 12
226 Fed. Rep. 2nd 57

Cohen v. Petty 13
65 Fed. Rep. 2nd 820

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Illinois Central Railroad Company (hereinafter referred to as and simply called "Railroad") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, affirming the final judgment and decree in a Civil Action at law by the United States District Court, Eastern District of Louisiana, Baton Rouge Division.

OPINION BELOW

The opinion of the Court of Appeals of the Fifth Circuit is not yet reported and is printed, *infra*, Appendix p. 15 herein.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit affirming the judgment appealed from was entered May 13th, 1959, and is printed *infra*, Appendix, p. 20 herein; the Motion for Stay of Mandate was filed June 1, 1959, and the Order granting the Stay was signed on June 5th, 1959, and is printed *infra* Appendix p. 24 herein.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254, Act of June 25, 1948, c. 646, 62 Stat. 928.

THIS PETITION PRESENTS THE FOLLOWING QUESTIONS OF LAW FOR REVIEW:

1. Can a Railroad Company be held guilty of negligence and liable to a switchman injured in the stopping of a switching operation when the sole evidence in the record shows that the stop was the result of an attack of sneezing suffered by the engineer brought on by outside circumstances beyond the control of the Railroad Company or the engineer operating the switch engine?

2. Is an engineer engaged in switching operations and who suffers from chemical fumes from industrial plants in the area and about to sneeze, knowing he would be unable to see the engine-foreman's flag-down signal and to be sure that he would not run into a string of cars from another switching

track while sneezing and brings his engine to a stop, be guilty of actionable negligence?

3. Are the actions of an engineer in making a stop as a result of an emergency brought on by an attack of sneezing from causes outside of and beyond his control, being those of a normal, reasonable, prudent and experienced person using his best judgment, be an act of negligence?

4. Is not an attack of sneezing suffered by an engineer operating a switch engine an act of nature or of God, that is involuntary, violent and sudden and as a matter of law, decisive on the question of actionable negligence?

STATEMENT OF THE CASE

Larry J. Andre, an employee of the Illinois Central Railroad Company, was one of a crew engaged in switching operations in the "B" yards north of the Standard Oil Company Plant and located between the plants of the Solvay and Ethyl Companies at North Baton Rouge, Louisiana. He was the pin-pulling switchman whose duties were to pull the coupling pin between cuts of cars being switched and kicked onto loading tracks at the Standard Oil Plant and at the time he was injured was working on a string of thirty-four tank cars, eleven of which were to be cut loose and kicked, with twenty-four cars between him and the engine, about 1,000 feet away, and not on the usual, customary or proper side that such switching operations called for, but on the side away from the engineer whom he could not see or be seen by to be able to see the required starting or stopping signals.